August 16, 2012

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Universal Service Contribution Methodology; Universal Service Administrative Company Request for Guidance, WC Docket No. 06-122

Dear Ms. Dortch:

The Commission is considering an item that would address an improper *Bureau Order* from 2004 that set an asymmetrical, one-year limit on a Universal Service Fund (USF) contributor's ability to re-file its FCC Form 499 and obtain a refund from the USF.[1] The one-year re-filing deadline stands in stark contrast to the Commission's view that contributors have an ostensibly unlimited obligation to re-file in situations where contributions to the fund would increase. Applications for Review of the *Bureau Order* have been pending for more than seven years.[2] And multiple parties who filed in response to the recent *NPRM* in this docket addressed this issue.[3] CTIA's members are far and away the largest contributors to the USF and are thus uniquely impacted by the asymmetrical deadline. The one-year deadline set in the *Bureau Order* is unfair, procedurally defective, and arbitrary and capricious. The Commission should replace it with a symmetrical deadline for both USF refunds and assessments.

In addition to process infirmities and inherent unfairness with the asymmetrical Form 499 re-filing deadline,[4] the Commission should replace the *Bureau Order* with a symmetrical

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[1] *Federal-State Joint Board on Universal Service*, Order, 20 FCC Rcd 1012 (WCB 2004) ("*Bureau Order*").

[2] *See* SBC Application for Review of Action Taken Pursuant to Delegate Authority, CC Docket Nos. 96-45, 98-171, 97-21 (filed Jan. 10, 2005); Qwest Application for Review, CC Docket Nos. 96-45, 98-171, 97-21 (filed Jan. 10, 2005); Business Discount Plan, Inc. Application for Review, CC Docket Nos. 96-45, 98-171, 97-21 (filed Jan. 10, 2005); *see also* Sprint Petition for Reconsideration, CC Docket Nos. 96-45, 98-171, 97-21 (filed Jan. 10, 2005).

[3] *See Universal Service Contribution Methodology*, Further Notice of Proposed Rulemaking, 27 FCC Rcd 5357 (2012) ("*NPRM*"); Comments of CTIA at 20-22; Comments of USTelecom at 11; Comments of AT&T at 46-49; Comments of Verizon at 12-15; Reply Comments of United States Cellular Corporation at 60-61.

[4] Comments of CTIA at 21; Comments of AT&T at 46-49 (observing that it is often impossible for contributors to know within one year if a USF refund is due because of resolution of customer billing disputes and other issues); Comments of Verizon at 12-15 (noting that factors such as state public service commission orders and external audit decisions beyond a carrier's control legitimately make the one-year refund deadline difficult to meet).

deadline for refunds and contribution assessments because the current rule significantly departs from analogous general tax law, both federal and state. The limitations periods for federal and state tax re-filings are typically longer than one year, and the limitations are generally symmetrical for tax refunds and assessments. The limitations range for tax restatements (both for refunds and tax increases) is typically two-five years, with an effective three-year statute of limitations being the most common.

Moreover – unlike the Commission's view of USF contribution obligations – with some reasonable exceptions state and federal tax authorities actually *do have* an express limit on a company's obligation to re-file for prior periods in situations where they would owe more taxes because of an error or new information relevant to their return. Reasonable tax restatement limitations going both ways are important in order to provide both the taxing authorities and the individuals and entities they tax with certainty for basic budgetary decisions and contingency planning. Indeed, reasonable statutes of limitation are cornerstones in civil and criminal law, and the specter of open-ended liability to the government is unfair to individuals and creates an unfriendly business environment.

For instance, the general rule for federal taxes such as the federal excise tax is that the statute of limitations runs for three years in both directions (assessments and refunds). The Internal Revenue Service (IRS) limitation on required restatements for tax assessments reads as follows:

> Except as otherwise provided in this section, the amount of any tax imposed by this title shall be assessed within 3 years after the return was filed (whether or not such return was filed on or after the date prescribed) or, if the tax is payable by stamp, at any time after such tax became due and **<u>before the expiration of 3 years</u>** after the date on which any part of such tax was paid, and no proceeding in court without assessment for the collection of such tax shall be begun after the expiration of such period.

I.R.C. § 6501(a) (emphasis added). Exceptions to the general rule include fraud, willful attempts to evade taxes, failure to file a return, and extension by agreement. *See id.* § 6501(c). The general IRS limitation on a taxpayer's ability to get refund is symmetrical:

> Claim for credit or refund of an overpayment of any tax imposed by this title in respect of which tax the taxpayer is required to file a return shall be filed by the taxpayer **<u>within 3 years</u>** from the time the return was filed or 2 years from the time the tax was paid, whichever of such periods expires the later, or if no return was filed by the taxpayer, within 2 years from the time the tax was paid.

See I.R.C. § 6511(a) (emphasis added) (special rules apply in unique circumstances).

Likewise, state tax authorities operate with express statutes of limitations for tax refunds and assessments. States typically limit both tax assessments and refunds to a range of two-five years with exceptions similar to the federal rules for fraud and other contingencies. State tax statutes of limitations are also typically, though not always, symmetrical for both refunds and assessments. And in the vast majority of cases, like the federal rules, states actually do have an express limit on a company's obligation to re-file for prior periods in situations where they would owe more taxes because of an error or new information relevant to their return. This is generally true nationwide. Various tax and legal periodicals maintain tables (available with a subscription) of the current statutes of limitations for state tax assessments and refunds. A sample of selected state tax statutes appears at Attachment A (note that not all state exceptions that pattern the federal exceptions are quoted).

In this proceeding the Commission has an opportunity to correct a longstanding error. The Commission can simultaneously resolve several pending petitions as well as provide workable rules of the road for USF contributions that are both fair and consistent with related provisions of federal and state law. The Commission should repeal the *Bureau Order* and replace it with a symmetrical limitations period for USF contribution refunds and assessments.

Should you have any questions please contact me.

Sincerely,

/s/ Scott K. Bergmann

Scott K. Bergmann
Assistant Vice President
Regulatory Affairs
CTIA-The Wireless Association®

cc: (via e-mail)
Chairman Genachowski
Commissioner McDowell
Commissioner Clyburn
Commissioner Rosenworcel
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Michael Steffen
Christine Kurth
Angela Kronenberg
Priscilla Delgado Argeris
Nicholas Degani
Carol Mattey
Trent Harkrader
Vickie Robinson

ATTACHMENT A

State	Tax Assessment - Statute of Limitations	Tax Refund - Statute of Limitations	Source
Alabama	3 years from later of return due date or return filing date.	Later of 3 years from return filing date or 2 years from payment date.	Alabama Code §40-2A-7(b)(2), (c)(2)
Arizona	4 years from later of return due date or return filing date.	Later of 4 years from return due date, 4 years from return filing date, or 6 months from payment date for deficiency assessment payments.	Ariz. Rev. Stat. §42-1104 Ariz. Rev. Stat. §42-1106
California	3 years from later of the end of the calendar month following the quarterly period for which the assessment relates, or the return filing date.	3 years from end of calendar month following the quarterly period for which the overpayment was made. Trigger dates also tied to overpayment dates in enforcement proceedings and determinations.	Cal. Rev. & Tax Code §6487(a) Cal. Rev. & Tax Code §6902 Cal. Rev. & Tax Code §6902.3
Colorado	3 years from later of tax due date or return filing (in limited circumstances) date.	Later of 3 years from return due date or 1 year from overpayment date.	Colo. Rev. Stat. §39-26-125 Colo. Rev. Stat. §39-21-107 Colo. Rev. Stat. §39-26-703
Florida	3 years from later of return due date, tax due date, or return filing date, or any time while a right to refund or credit is available to taxpayer.	3 years from payment date.	Fla. Stat. ch. 95.091(3) Fla. Stat. ch. 215.26(2)
Minnesota	3.5 years from later of return due date or return filing date. If taxes underreported by more than 25%, 6.5 years from later of return due date or return filing date.	Later of 3.5 years from return due date (including extensions), or 1 year from the date of an assessment order and other orders and determinations.	Minn. Stat. §289A.38 Minn. Stat. §289A.40
New York	3 years from return filing date.	Later of 3 years from filing date or 2 years from payment date.	N.Y. Tax Law, §1147(b) N.Y. Tax Law, §1139(c)
Ohio	4 years from later of return due date or return filing date. For use tax, 7 years from the return due.	4 years from payment date.	Ohio Rev. Code Ann. §5739.16(A) Ohio Rev. Code Ann. §5703.58(B) Ohio Rev. Code Ann. §5739.07(D)
Oklahoma	3 years from later of return due date or return filing date.	3 years from payment date.	Okla. Stat. Tit. 68, §223 Okla. Stat. Tit. 68, §227
Rhode Island	3 years from later of return filing date or the 15th day of the month following the month in which the return was due.	Later of 3 years from 15th of month after the close of the month for which overpayment was made, or 6 months from overpayment date for payments resulting from determinations.	R.I. Gen. Laws §44-19-13 R.I. Gen. Laws §44-19-26
Texas	4 years from tax due date (no limitation if tax understated by 25% or more).	4 years from tax due date; if subject of deficiency determination, later of 4 years from tax due date or 6 months after deficiency determination becomes final.	34 Tex. Admin. Code §3.339(a) 34 Tex. Admin. Code §3.325(b)
Virginia	3 years from tax due date.	3 years from tax return due date.	Va. Code. Ann. §58.1-634 23 Va. Admin. Code. §10-210-3040
Wyoming	3 years from the date of delinquency; if delinquency determined by audit, 3 year count begins 30 days after assessment issued.	3 years from overpayment date.	Wyo. Stat. Ann. §39-15-110(b) Wyo. Stat. Ann. §39-15-109(c)